OFFICIAL ADMINISTRATOR, F.M. v. CHINA INSURANCE CO. LTD.

[O. C. J. (Buhagiar J.) March 7, 1956]

[K. L. — Civil Suit No. 141 of 1955]

Motor-car Insurance — Whether vehicle used for policy holder's business — Repairer taking out vehicle for a test run — Motor Vehicles Third party Risks Regulations, reg. 8.

The facts in this case were as follows: One P. Chellappah was killed as the result of an accident when he was knocked down by a jeep belonging to one Wong Shin and driven at the time by one Lee Ngiow. On the day the accident took place Wong Shin had given his jeep to a garage for repair. He told the garage proprietor, Lee Ngiow, that he wanted the jeep the same evening and gave full authority to do all that was necessary to put the jeep in a proper running order. The repairs were carried out and the jeep was taken out by Lee Ngiow for a test and it was during this test run that the accident happened.

The Official Administrator as administrator of the estate of P. Chellappah obtained judgment against Lee Ngiow for damages and subsequently claimed the amount of damages and costs from the defendant insurance company by reason of the provisions of reg. 8 of the Motor Vehicles Third Party Risks Regulations. At the time of the accident there was in force in respect of the vehicle a policy issued to Wong Shin by the defendant Company. It was argued at the trial that the defendants were not liable as at the time of the accident the vehicle was not being used for the business of the insured but for a purpose in connection with the motor trade of Lee Ngiow.

Held: (1) in a claim for damages against an insurance company the question to be decided is whether the policy covered the use which the insured was making of the motor-car at the time of the accident and subject to any limitation in the policy, it is immaterial whether the motor-car was then being driven by the insured himself or his servant or agent with his permission or whether the insured is at the time in the car or not;

(2) at the time of the accident in this case the garage proprietor was using the jeep for and on behalf of the policyholder and therefore the jeep was not being used outside the limitations as to use in the policy.

Cases referred to :—

(1) *Lyons v. May* (1948) 2 All E.R. 1062.
(2) *Passmore v. Vulcan Boiler etc.* 54 Ll. L.R. 92.
(3) *Wood v. General Accident Fire and Life Assn. etc.* (1948) W.N. 430.
(4) *John T. Ellis Ltd. v. Hinds* (1947) 1 All E.R. 337.
(5) *March v. Moore & Anor.* (1949) 2 All E.R. 27.
(6) *Ormond v. Crosville Motor Services Ltd.* (1953) 2 All E.R. 753.
(7) *Gray v. Blackmore* (1934) 1 K.B. 95.

CIVIL SUIT.

D. G. Ranson for the plaintiff.

H. L. Wrigglesworth for the defendants.

Buhagiar J. : — P. Chellappah was killed as a result of an accident when he was knocked down by a jeep No. B. 6309 belonging to one Wong Shin and driven at the time by one Lee Ngiow. On the day the accident took place the said Wong Shin gave his jeep to a garage for repairs because as he put "it had no power"; he told Lee Ngiow, the garage proprietor or one of his employees that he wanted the jeep the same evening as he was proceeding to Penang the next day; he gave full authority to do all that was necessary to put the jeep in a proper running order. The repairs were carried out and the jeep was taken out by Lee Ngiow for a test and it was during this test run that the accident happened.

The Official Administrator, as administrator of the estate of P. Chellappah, sued Lee Ngiow for damages in Civil Suit No. 648 of 1953. Negligence was admitted and damages under the Civil Law Enactment and under the Executor and Fatal Accidents Enactment were assessed at $18,000.

The plaintiff is now claiming that amount and costs in Civil Suit No. 648 of 1953 from the defendant insurance company by reason of the provisions of Regulation 8 of the Motor Vehicles Third Party Risks Regulations.

At the time of the accident there was in force in respect of vehicle B. 6309 policy No. 352543 issued to Wong Shin by the defendant Company.

Originally the defendant Company relied on two points that is :—

(a) that the said Lee Ngiow was not driving the vehicle with the permission of the owner, Wong Shin; and
(b) that the vehicle was at the time of the accident being used for a purpose in connection with the motor trade and hence was not covered by the policy of insurance.

The first point was abandoned after Wong Shin had given evidence as to the circumstances under which he gave the jeep to Lee Ngiow and the only point to be decided is whether at the material time the aforesaid policy covered the use of the vehicle in the circumstances mentioned.

The relevant clauses of the policy are :—

(a) as to the persons or classes of persons entitled to drive the jeep, the policy covers the policyholder and any other person who is driving on the policyholder's order or with his permission;
(b) as to limitations as to use, the policy covers use only for social, domestic and pleasure purposes and for the policyholder's business; the policy does not cover use for any purpose in connection with the motor trade.

The defendant company relies on the last mentioned limitation.

Mr. Wrigglesworth for the defendants submitted, and tried to show by evidence that it is the practice for garage proprietors to take out policies to cover the use of motor vehicles in connection with their trade and that in this case Lee Ngiow was not covered by his own insurance for the purposes of his trade. From the said practice he tried to draw the inference that Wong

Shin's policy does not cover an accident in the circumstances of the present case. He referred to the case of *Lyons v. May*[1]; the facts there were that at the request of the owner, a garage proprietor drove a motor lorry, which he had been repairing back to the owner's premises; the garage proprietor had no policy of insurance in force which covered the lorry and the lorry owner's policy covered only himself and any authorised person in his employment; it was held that the garage proprietor was not in the employ of the lorry owner and that there was not in force at the time a policy of insurance against third party risks in respect of the lorry and the lorry owner was therefore guilty of the offence of permitting the lorry to be used on the highway without there being in force the required policy of insurance; it was also held that as in the ordinary course and according to commercial experience of people, the garage proprietor would be covered by a policy of insurance because his trade would require him to have such policy to cover the driving of a lorry, e.g. for testing and for putting it on the road there were special reasons for not disqualifying the lorry owner for holding a licence. The facts in that case would, at first, seem to be on all fours with the facts in this case but in effect what the decision amounts to is this : that the garage proprietor was not covered by an insurance policy of his own to drive the lorry and the owner's policy in view of the limitations contained therein did not cover the driving of the lorry in the circumstances mentioned.

The learned Counsel for the defendant company submitted that at the time of the accident the vehicle was being used by Lee Ngiow in connection with his motor trade and this user being outside the scope of the policy there was no liability to payment. He also submitted that to say that at the time of the accident the vehicle was also being used for the benefit of the owner is a fallacious extension of "user"; for purposes of the insurance policy there cannot be two users concurrently; in support of this proposition he referred to the case of *Passmore v. Vulcan & General Insurance Co. Ltd.*[2]. The facts, as appear in Du Parcq J.'s judgment were as follows : "On February 17, 1934, Mrs. Cooke was driving the motor car, and she and the claimant (Miss Passmore) were driving to a place where it was intended to endeavour to sell the products of the company (Realsilk Hosiery Company). They were both engaged on their respective businesses and at the time of the accident the motor car was not being used for the business of the claimant alone. It was being used for the business of the claimant as representative of the Realsilk Hosiery Company, and also for the business of Mrs. Cooke." The question to be decided in that case was whether at the time of the accident the car was being used otherwise than in accordance with the "description of use", that is otherwise than for social, domestic and pleasure purposes and *use for the business of the insured*. It was held that as the car was not being used for social, domestic or pleasure purposes and was used otherwise than for the business *of the insured* that is it was used for the business of Mrs. Cooke, the insurers were not liable in respect of the accident. I do not think, however, that that case decided that there cannot be use of a motor-car for more than one purpose at a particular time; this is made perfectly clear in Du Parcq J.'s judgment where he said :—

> ". . . and I want to make quite clear what I am deciding. I have come to the conclusion, after careful consideration of the case stated, that the learned arbitrator was right. It is very important to observe that the arbitrator has found in terms, and clearly with intention, that the car was being used for business purposes. The first thing that occurs to one as one looks at the policy is, I think, that a case might arise where the person insured under the policy would extend a courtesy to a friend or acquaintance, or it might be to a stranger, who was, in fact, carrying on some business and was assisted in carrying on that business by the facilities which were given to him by the insured. In such a case, if the facts found were that the insured, as a matter of kindness, courtesy or charity, gave a lift — to use a colloquial phrase — to someone who happened to be on business of his own, I have no doubt that the proper view to take would be that the car was, for the time being, being used for a social purpose, and it would not the less be used for a social purpose because the person benefitting by the courtesy was on business."

In that case at the time of the accident the motor-car was being used first for the purpose of Miss Passmore's business and secondly and in addition for the purpose of Mrs. Cooke's business and the policy covered only the use for the purpose of Miss Passmore's business.

There can be no doubt that the purpose of which a motor-car is being used at a particular time may be different according to the different persons riding in the car or benefitting from the use of the car, and as the case of *Wood v. General Accident Fire and Life Assurance Corporation, Ltd.*[3] illustrates, there may be more than one purpose in the use of a car according to how one looks at a particular journey. In that case a motor dealer's policy included third-party liability of an employee of the policyholder who on the order or with the permission of the policyholder was using certain vehicles for "social, domestic and pleasure purposes". The policyholder was injured on a journey to a firm in London with whom he intended to negotiate a contract in connection with his garage business. His employee who drove the car on that journey claimed to be indemnified by the insurance company. The arbitrator found *inter alia* that the policyholder was about 67 years old and that on the occasion in question it was more convenient for him to travel in the particular car (which was his own property and which was immediately available to him) than in a hired vehicle and that it was more comfortable,

pleasurable and restful for him to make the journey in that car. It was contended for the claimant that one should look at the journey objectively, that the purposes for which the car was then being used should be contrasted with the object of the journey and that provided the car was, at the time, being used for the purpose of pleasure, it did not matter that it was also being used for other purposes. It was held, however, that it would be giving an unnatural use to words to hold that the journey was for social, domestic or pleasure purposes.

Mr. Rawson, for the plaintiff, submitted that in considering the liability of an insurance company under an insurance policy the question is whether the use of the vehicle is covered by the policy and not whether the driver is covered, and in support of this submission he referred to *John T. Ellis, Ltd. v. Hinds*[4], which was followed in *March v. Moore & Anor.*[5]; that case laid down that a policy of insurance is in force in relation to the user of a vehicle if the owner's liability for accidents is covered by an insurance policy. Lord Goddard C.J. said at p. 339 :—

> "No doubt, the owner of the car who drives himself uses the vehicle but so he does if it is driven on his account by his servant. A person who rides in his car while it is being driven by someone else, or who sends his driver out with his motor vehicle on business, uses, but does not drive, the vehicle."

The learned Counsel for the plaintiff also submitted that Lee Ngiow was the agent of Wong Shin, the policyholder, if not in the full legal sense within the decision in *Ormond v. Crosville Motor Services Ltd.*[6].

In a case of claim for damages against an insurance company the question to be decided is, in my opinion, whether the policy covers the use which the insured was making of the motor-car at the time of the accident; and subject to any limitation in the policy, it is immaterial whether the motor-car was then being driven by the insured himself, or by his servant or agent or with his permission, or whether the insured is at the time in the car or not.

It is not contested that Lee Ngiow was driving with the permission of the policyholder Wong Shin and the only question, therefore, is whether at the time of the accident the use of the jeep was in connection with the motor trade of Lee Ngiow or for the policyholder's business. It cannot be denied that the repairing of the jeep and the testing of it before returning it to the owner were part of the garage proprietor's business; the repairs to the jeep would be to the benefit of that business and it is only in that sense that it can be said that the jeep was being used "for any purpose in connection with the motor trade". But can it be said that the policyholder was using or allowed or permitted the use of the jeep for any such purpose? The answer in my opinion is clearly in the negative; the policyholder wanted the jeep for his business, he was going next day to Penang on business and naturally he wanted the jeep in good running order; after the repairs had been effected by the garage he wanted to be sure that it was in good running order and for this purpose he gave authority to the garage proprietor to test the jeep; and at the time of the accident the garage proprietor was using the jeep for and on behalf of the policyholder and therefore for the purposes of the policyholder. If the policyholder himself had carried out the test after the repairs had been completed, I do not think that there could be any doubt that the jeep was not being used in connection with the motor trade and I can see no difference between the policyholder carrying out the test himself and authorising or giving permission to somebody else to use the jeep for the purpose of testing it for him. If, while the garage proprietor had the custody of the jeep, he had used it for the purpose of an emergency call made to his garage to attend to a broken down car of one of his customers and an accident occurred while the jeep was being used for this purpose then that would clearly be use in connection with the motor trade, and as in the case of *Gray v. Blackmore*[7] the policy would not cover such use.

For the above reasons I held that at the time of the accident the jeep was not being used outside the limitations as to use in Policy No. 352543 issued to Wong Shin by the defendant company and that the defendant company is liable.

Judgment for the plaintiff in $18,000 the costs in Civil Suit No. 648 of 1953, with costs in this suit.

Order accordingly.

Solicitors : *Shearn, Delamore & Co.; S. M. Yong & Co.*

OEI SIOE NEO v. YEAP KIM HOE

[O. C. J. (Spenser-Wilkinson J.) April 13, 1956]

[Penang — Summons-in-Chambers No. 16 of 1956]

Rules of the Supreme Court, O. 28, rr. 11 & 15 and O. 63 — Judgment in default of appearance — Nullity — Irregularity — Discretion of Court to set aside irregular judgment.

This was an application to set aside a default judgment on the ground (1) that it granted relief not asked for in the writ of summons; (2) that it was entered for too much.

Held: (1) the claim in the writ in this case was sufficiently wide to cover the terms of the judgment and the judgment was therefore not irregular;

(2) even if it was shown that the judgment was irregular, the Court would not in this case have exercised its discretion to vary the judgment.

Cases referred to :—

(1) *Hughes v. Justin* (1894) 1 Q.B. 667.

(2) *Muir v. Jenks* (1913) 2 K.B. 412.